

Please add the following new claims:

135 ~~30~~ 30. Protective device for a repeatedly rechargeable electrochemical battery with a battery housing, comprising a hermetically sealed protective housing, a detector element, and at least one switching element which is activatable by the detector element and which prevents at least one of recharging and discharging of the battery when the battery is in [an impermissible] a predetermined operating state; wherein the hermetically sealed protective housing has a receiving space for the battery housing and is part of an implantable medical device; [and] wherein the detector element is constructed and arranged to deflect, at least in part, in response to occurrence of [an impermissible] said predetermined operating state of the battery; wherein the switching element is positioned so as to be activated by deflection of the detector element; and wherein said detector element is external to the battery housing and is received in the protective housing.

~~31~~ 31. Protective device as claimed in claim ~~30~~ 30, wherein said predetermined operating state is one of a predetermined expansion of the battery housing and leakage of gas from the battery housing.

~~29~~ 29. Protective device as claimed in claim 1, wherein said predetermined operating state is one of an predetermined expansion of the battery housing and leakage of gas from the battery housing.--

REMARKS

By the above actions, the specification and claims 1-7, 11, 22, and 28 have been amended and new claims 29-31 have been added. In view of these actions and the following remarks, reconsideration of this application is requested.

Before discussing the Examiner's Action, it is noted that a spelling error exists in the Declaration with respect to one of the inventor's names. Therefore, enclosed herewith is a declaration from the inventor whose name is correct for purposes of establishing the correct spelling thereof, and it is requested that the official records be changed to correct the spelling of Klaus Bogdanowitz' name.

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The specification has been objected to and claim 28 rejected, due to an asserted failure to define or support the term "bio-compatible." However, it is pointed out that the Examiner evidently overlooked page 7 of the specification where support for claim 28 could be found, and the Examiner has also failed to take into consideration the fact that the meaning of this term can be found in a standard dictionary; see appended extract from The American Heritage Dictionary of the English Language where the term "biocompatible" is indicated to be the adjective form of "biocompatibility" which means "being biologically compatible by not producing a toxic, injurious or immunological response on living tissue," with the example given being with regard to a material used in medical devices. Thus, it is not necessary for applicant to define a term already having an establish definition and applicant has merely corrected the spelling of this word which should not have been hyphenated. Additionally, the section of the page 7 describing this aspect of the invention has been duplicated in the "Detailed Description" at page 23. Thus, the objection and rejection based on the term "bio-compatible" should now be withdrawn.

As for the indefiniteness of the other claims, the term "impermissible operating state" has been changed to --predetermined operating state-- and antecedent basis provided for "said deflection." Furthermore, claim 22 has been amended to positively recite that "the protective housing has areas which are electrically insulated relative to one another" to provide a basis for the recitation that such areas are contacted by the terminal contacts of the battery. As for the "relative degree" comment by the Examiner, such is not understood since anyone of any skill in the art would know that what is meant by electrically insulated relative to one another is that sufficient electrically insulative properties exist between the insulated areas that the terminals applied to them will not be caused to short out. Thus, it is not seen why a definition needs to be provide for that which any skilled person would know.

Accordingly, withdrawal of the rejection under 35 U.S.C. § 112 is in order and is requested.

Turning now to the prior art rejection under 35 U.S.C. § 103 based on the combination of the European Patent Application (hereafter, "EPA '726") commented upon in the first full paragraph of page 2 of the present application when viewed in combination with the Nagai et al. patent, withdrawal of this rejection is in order for the following reasons.

Firstly, as recognized by the Examiner, EPA '726 does not disclose the use of a protective housing in addition to the housing of the battery. For this reason, the detector element and the



switching element are arranged within the battery housing. This is in direct contrast to the present invention which arranges the detector element so as to either form “**part of the protective housing**” as set forth in amended claim 1 or be “**external of the battery housing**” within the protective housing as recited in new claim 29. As a result, the present invention is able to detect a pressure rise due to a gas leak which is not possible with the arrangement of EPA ‘726 because its detector is internal to the battery housing which is not enclosed in a hermetically sealed protective housing as is the case for the present invention. EPA ‘726 is only capable of detecting a buildup of pressure within the battery housing, not leakage of gas from the battery housing.

As for the Nagai et al. patent, this reference is even less relevant than EPA ‘726 in that it merely discloses that a plurality of batteries can be enclosed by a common housing, which Nagai et al. term a “battery package.” However, Nagai et al. do not suggest that their battery package be used as a protective housing which is hermetically sealed. At most, Nagai et al. would teach arranging of several batteries of the type disclosed in EPA ‘726 within a housing such as theirs. However, there is nothing in their teachings which would lead one of ordinary skill in the art to arrange a detector element so as to either form “**part of the protective housing**” as set forth in amended claim 1 or so as to be “**external of the battery housing**” within the protective housing as recited in new claim 29, which battery housing is hermetically sealed. As a result, no combination of these two references could lead one of ordinary skill in the art to the present invention, and as such, the rejection based thereon under § 103 should be withdrawn.

The prior art which has been cited but not applied by the Examiner has also been reviewed and taken into consideration during preparation of this response. However, since none of these other references is any more pertinent than the art relied upon by the Examiner and since this art was not found to be of sufficient relevance by the Examiner to apply against the original claims, no detailed comments thereon are believed to be warranted at this time. The Examiner’s attention is also directed to the accompanying Information Disclosure statement providing a copy of a German reference which was cited by the German Patent Office with respect to the priority application. However, this reference is also distinguishable from the present invention in that it relates to an arrangement for providing heat to storage cells dependent upon the position of a temperature responsive bi-metallic switch which is part of a metallic jacket for the storage cells, and not to an arrangement where a hermetically sealed enclosure is provided for detecting gas

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leakage from the cells using a deflectable switch that is either part of the protective housing or received therein external to the battery housing.

While the present application is now believed to be in condition for allowance, should the Examiner find some issue to remain unresolved, or should any new issues arise, which could be eliminated through discussions with applicants' representative, then the Examiner is invited to contact the undersigned by telephone in order that the further prosecution of this application can thereby be expedited.

Respectfully submitted,

By: 

David S. Safran
Registration No. 27,997

NIXON PEABODY LLP
8180 Greensboro Drive, Suite 800
McLean, Virginia 22102
Telephone: (703) 790-9110

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